form of reimbursements to the parents, a conduit plan, or directly to the school. The economic consequences are the same for the church-related school whether it receives funds through a direct grant, a conduit plan or because the state increases family incomes through a reimbursement program which enables the parents to continue to pay tuition. In each case, tax-raised funds are being used to subsidize religious education."

With reference to the question presented, Amicus refers to and incorporates herein the opinion of the Ohio United States District Court, dated December 19, 1972, Supreme Court number 72-1139. It correctly analyzes the unconstitutional nature of the statutes attacked below. They are discriminatory, involved and unconstitutional classifications, and would produce political entanglement and religious rancor.

That opinion presents an analysis of this court's prior holdings in the area of Constitutional law and resolves any apparent inconsistency. It pinpoints their differences. It focuses on classification.

The District Court opinion referred to services that are generally held valid, such as police or fire protection or bus transportation. It said that

"Where the affected class of a legislative enactment is a broad and internally pluralistic one, then as a matter of law, the primary effect of such a statute is not the advancement of religion, and strict judicial inquiry into such statute need be had only along the rubric of administrative, and not political entanglement. See Tilton vs. Richardson, Infra 403 U.S. at 688."

The Court then held

"Conversely, where the affected class is predominantly religious or sectarian and the benefits provided are not inherently ideologically neutral, as where the state provides monetary grants to parents or institutions belonging to a class that is essentially religious in character, then, as a matter of law, the primary effect of such a statute is to advance religion, and the statute must be closely scrutinized for possible entanglement effects, primarily in terms of political entanglement."

To condense further, the Court held:

"When a statute has the effect, under prong two of the *Lemon* test, of conferring benefits to predominantly religious groups, clear and convincing *evidence* must be adduced that such risk will not be increased." (emphasis added).

Reasons for the Court's holdings and for the principles and precedents are set forth in detail and cogently in the opinion.

The application to the case at bar of some of the principles and precedents of that case can be succinctly paralleled as follows:

FIRST: the court disposed of the fiction that tax credits are for parents rather than for tuition payments to church schools.

Aside from the obvious conclusion that there is no difference in substance between credits and subsidies, it concluded, based upon *Griffin v. State Board*, 377 U.S. 218, and other cases, that "tax exemptions, deductions and credits, like reimbursement grants, are all benefits conferred by the state and that they may not be employed in a fashion which impedes public policy or

violates constitutional protections." The court held that such tax credits grant such taxpayers an economic advantage not available to taxpayers generally, and that since the benefited class of taxpayers is sectarian the classification is unconstitutional. So also in the case at bar.

SECOND: the court disposed of the argument that the parent of a nonpublic school student is performing a reimbursable service by sending his child to a private rather than a public school. The court correctly pointed out that such a contention theoretically would lead to the conclusion that every individual who foregoes use of a broadly provided public service, such as welfare and public hospitals for which the general public is taxed, should be reimbursed for his proportionate share.

THIRD: the court also disposed of the odd contention that the Statutes merely enforce the free exercise of religion rights of parents and taxpayers. The court noted that no federal case heretofore ever has countenanced placing an affirmative duty upon the state to appropriate money so that religious beliefs may be proselytized or religious institutions assured; rather, this court has maintained steadily that the state must remain *neutral* in such situations.

FOURTH: and highly important, the court implicitly holds that statutes similar to those below will generate political controversy along religious lines. There would be annual debates and strident apposition and recurrent religious and political strife over the need to tap general revenue for ever increasing private school costs. Governmental entanglement would follow as the night the day.

A review of the religious rancor, acrimony, strife and cruel warfare elsewhere in the world today against the

background of historic reasons leading to our First Amendment demonstrates the wisdom of our constitutional founders. They remembered from education and experience that the Bill of Rights was a necessary condition to adoption of the Constitution. They remembered the extremes of sectarianism that had plagued the Old World. They were far closer to these experiences than us in point of time. They remembered how the mixing of state and church forced many of our colonists to seek refuge upon our shores. They remembered why for them and for their posterity the separation of church and state was and is the sine qua non for religious freedom.

See the following progenitors of our First Amendment: Maryland's Toleration Act (1649); the Charter of Rhode Island (1663); Samuel Adams, *The Declaration of the Rights of Men* (1772); John Adams, *Feudal and Canonical Law* (1768); the First Continental Congress' Declaration of Rights and Liberties (1774); Virginia's Declaration of Rights (1776); the Bill of Rights of Maryland (1776); the Bill of Rights of New York (1777); the Bill of Rights of Massachusetts (1780); and also Virginia's The Act for Establishing Religious Freedom (1785).

This fundamental principle for religious peace became so imbedded in the organic structure of our nation that by 1876 the Congress required each state admitted into the Union to provide constitutionally for a public school system free from sectarian control.

Yet, this court has had to wrestle repetitively with recurrent drives of religious sects to obtain public funds for a separate church school system. Such a religiously oriented separate school system differs markedly from a public school system as appears from prior opinions of this court.

1. The prime purpose of a church school is to foster its particular faith and to indoctrinate the attending children. Some reject the American ideal of religious freedom for all creeds and move to make their religion compulsory as the only "true" one, and to that end conduct their own separate church schools. A public school is conducted without regard to creed.

2. A school under religious control segregates its children along sectarian lines. A public school, on the other hand, is an American melting pot for a unified and enlightened citizenry.

3. There is no effective public control over church-related schools, their teachers, schoolbooks or what is taught. The tax remission of parochial school parents and enforced additional taxation of others truly would be taxation without representation. Education in a church school is also honeycombed with religious indoctrination. This permeates all subjects: mathematics, science, foreign languages and other studies. In addition, some church-school texts and teachers inveigh against other faiths, impressing upon children that they are forbidden to join other organizations and, under church dogma, are bound to shun other groups. In a public school, the citizens themselves at local levels control the curricula and inculcate principles of Americanism.

4. Some operators of schools under church control seem to have an insatible appetite for expansion, excusing this under the "population explosion." That sect which conducts the most schools by far, when in control of the state elsewhere in the world, denies to rival sects and schools the public support it seeks in this country.

5. Schools under church control are competitors of the public schools, openly or covertly. This leads to belittling, downgrading, criticism and the suicidal destruction of the public schools. Experience so demonstrates.

The current drive is for tax credits in reimbursement of tuition to those parents who reject public schools and elect to send their children to private schools. Tuition may be the lifeblood of private schools, but we submit this is a private problem that calls for private solutions. There are less violent alternatives than direct or indirect public support. (See, When Parochial Schools Close, 1972, by Martin A. Larson. Robert B. Luce, Inc., 2000 N Street, N.W., Washington, D.C.).

CONCLUSION

The price of public support for church schools would be the emasculation from our organic political structure of those protective constitutional provisions that our founders struggled mightily and with great wisdom to spell out for us. Their retention and maintenance are required for our religious and political security.

The wit of man cannot name or devise a proposed form of state aid to church schools that will not undermine the historic ideal of church-state separation, violate both Federal and State constitutions, severely damage—if not destroy—the American public school system and American educational standards, accelerate the fragmentation of our people, and acutely increase political and religious dissension.

It is therefore respectfully submitted that this Court should declare unconstitutional the laws of New York seeking to provide reimbursement for tuition paid to private schools and tax credits for tuition.

Respectfully submitted,

Henry C. Clausen
Attorney for United Americans for Public Schools

CERTIFICATE OF SERVICE

I, Henry C. Clausen, attorney for movant herein, and member of the Bar of the Supreme Court of the Unite States, certify that a copy of the foregoing Motion fo Leave to File Brief Amici Curiae and a copy of the brie in support of said motion have this day been mailed, wit sufficient postage prepaid to: Mr. Leo Pfeffer, Attorne at Law, 154 East 84th Street, New York, New Yor 10028; Honorable Louis J. Lefkowitz, Attorney Genera State of New York, State Capitol, Albany, New Yor 12224; Mr. John Haggerty, Senate Chambers, The Cap itol, Albany, New York 12224; Messrs. Davis, Polk & Wardwell, Attorneys at Law, One Chase Manhattan Plaz New York, New York 10005.

San Francisco, California, March 5, 1973.

Henry C. Clausen